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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,052	10/25/2000	Ludwig Busam	CM1778Q	9275

27752 7590 03/28/2003

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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/28/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/674,052

Applicant(s)

BUSAM ET AL. *MT*

Examiner

Dennis Ruhl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other:

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 5, the examiner is not clear as to what the term "bonded area" means. It has not been recited that the 1st/2nd materials are even bonded to anything at all, so what is meant by reciting that the bonded area of one is greater than the bonded area of the other? Bonded to what? Even after a review of the specification on page 14 it is not clear what the bonded area actually is.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,3,4,6-12, are rejected under 35 U.S.C. 102(b) as being anticipated by Gilman et al. (5437653).

With respect to claims 1,6-9,11, Gilman discloses a laminated web that has a 1st material 12 and a 2nd material 20. The claimed open area is disclosed in column 3, lines 31-34, and the recited aperture sizes are disclosed in column 3, lines 58-63. The apertures of the 1st and 2nd materials are aligned as claimed.

With respect to claims 3,4, the 1st/2nd materials are nonwoven. They have no weave.

With respect to claim 12, the backsheet is 16 and the absorbent is 22.

With respect to claims 1,10, (a slightly different interpretation from that set forth above for claims 1,6-9,11), Gilman discloses a laminated web that has a 1st material 20 and a 2nd material 12. The claimed open area is disclosed in column 3, lines 31-34, and the recited aperture sizes are disclosed in column 3, lines 58-63. The apertures of the 1st and 2nd materials are aligned as claimed. The 2nd material has a greater width than the 1st material as claimed.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gilman et al. (5437653).

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Gilman discloses the invention substantially as claimed. Gilman does not disclose that the 2nd material has more hydrophilicity than the 1st material. Gilman discloses that the 1st material provides a dry surface against the skin of the wearer and in column 3, lines 3-14 Gilman discloses suitable materials for the 1st material. The disclosed materials (polymers) are hydrophobic. Gilman calls the 2nd material an absorbent layer. Gilman does not disclose this layer to be hydrophilic. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the 2nd material hydrophilic to enhance the absorbency of that layer because after all it is an absorbent layer. An absorbent layer is intended to absorb fluids. If the 2nd material is hydrophilic, it will have more hydrophilicity than the 1st material, because the 1st material is hydrophobic.

8. Claims 1-4,6-9,11,12, are rejected under 35 U.S.C. 103(a) as being unpatentable over Langdon et al. (5500270).

With respect to claims 1,6-9,11, Langdon discloses a laminated web that has a 1st material 242 and a 2nd material 246. The laminated web has apertures that are aligned as claimed (see fig 7). The aperture size is disclosed in Langdon, because of the incorporation by reference of Radel et al. (4342314) in column 9. Radel discloses sizes of apertures that satisfy what has been claimed. Not disclosed is what the percent open area of the laminated web is. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the claimed percent open area because the open area determines how well fluid can pass through the laminated web. The more apertures or larger sized apertures there are, the more fluid can pass through

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the web. The less apertures or smaller sized apertures there are, the less fluid passes.

To provide the laminated web with a 20% open area is considered obvious to one of ordinary skill in the art to allow for desirable fluid flow through the laminated web.

With respect to claim 2, see column 6, lines 41-44.

With respect to claims 3,4, the 1st/2nd materials are nonwoven. They have no weave.

With respect to claim 12, the backsheet is 23 and the absorbent is 24.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Radel et al. (4342314), Curro (5352217), Ahr (4321924), Mattingly et al. (4690679), Ryan et al. (5019062), Butterworth et al. (3967623), and Srinivasan et al. (5567501) disclose laminated webs with aligned apertures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


DENNIS RUHL
PRIMARY EXAMINER